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has found that such an easement does not have to be continuous in nature.¹³ Since this would be an implication of a grant, it would of course be subject to a liberal construction in favor of the grantee.¹⁴

INSURANCE — FALSE STATEMENTS IN APPLICATION FOR LIFE POLICY AS DEFENSE TO LIABILITY — DUTY OF COMPANY'S AGENT TO RECORD CORRECTLY APPLICANT'S ANSWERS. — Action was brought to recover compensation under the disability clause of an insurance policy. The defense was that a prior injury had been falsely denied in the application. Although the insured had truthfully admitted this previous injury, incorrect answers were recorded by the company's medical examiner. *Held*, that the false statements in the application constituted no defense, since the insurance company was bound by the act of its agent. *Kincaid v. Equitable Life Assurance Society*.¹

The rule adopted by the majority of the courts is that if the agent falsely inserts answers in the application without the knowledge of the person seeking insurance, the company will then be estopped to urge the defense of misrepresentation.² This doctrine prevails apparently without regard to whether such acts of the agent were done fraudulently³ or by mistake.⁴ A few jurisdictions, however, have mistakenly invoked the parol evidence rule in refusing to admit evidence of the oral transaction.⁵ In the federal courts, answers falsely inserted by the agent may be used as a

principal case; (1) the dominant estate, and (2) the easement in the private alley.

¹³ "The legal principle requiring an easement to be 'continuous' as a requisite to a grant or reservation thereof by implication, is not applicable to a way." *Hoffman v. Shoemaker*, *supra* n. 7.

¹⁴ *Deer Creek Lumber Co. v. Sheets*, 75 W. Va. 21, 83 S. E. 81 (1914).

¹ 183 S. E. 40 (W. Va. 1935).

² *Continental Life Ins. Co. v. Chamberlain*, 132 U. S. 304, 10 S. Ct. 87 (1889); *Phoenix Ins. Co. v. Wartenburg*, 79 Fed. 245 (C. C. A. 9th, 1897); *McCall v. Phoenix Mutual Life Ins. Co.*, 9 W. Va. 237 (1876); *Medley v. German Alliance Ins. Co.*, 55 W. Va. 342, 47 S. E. 101 (1904); *Insurance Co. v. Williams*, 39 Ohio St. 584 (1883); *Mink v. Ins. Co.*, 76 Cal. 50, 14 Pac. 837 (1888).

³ *Creed v. Sun Fire Office*, 101 Ala. 522, 14 So. 323 (1893); *Germania Fire Ins. Co. v. McKee*, 94 Ill. 494 (1880).

⁴ *Bennett v. Agricultural Ins. Co.*, 106 N. Y. 243, 12 N. E. 609 (1887).

⁵ *McCoy v. Metropolitan Life Ins. Co.*, 135 Mass. 82 (1882); *Thomas v. Commercial Union Assur. Co.*, 162 Mass. 29, 37 N. E. 672 (1894); *Franklin Fire Ins. Co. v. Martin*, 40 N. J. Law 568 (1878); *Martin v. Ins. Co. of North America*, 57 N. J. Law 623, 31 Atl. 213 (1895).

defense, provided the application contains provisions expressly limiting the power of the agent to bind his company by his acts and representations.⁶ Such a limitation has been ignored⁷ or rejected⁸ by the state courts as running counter to the principle that one may not exempt himself by contract from the fraud of his agent.⁹

There is the faint suggestion in the principal case that its outcome might have accorded with the federal rule, had there been restrictive covenants in the application limiting the agent's authority as auditor or recorder of answers to questions.¹⁰ Under prior West Virginia decisions,¹¹ however, it would seem that the result here reached is desirable even in the presence of such limitations on the agent's authority. The fact that applicants for insurance regard the signing of the application as a matter of form and rely upon the superior knowledge and good faith of the agent justifies the placing of the risk of the agent's misconduct upon the company.

INSURANCE—WAIVER OF CONDITION AFTER LOSS—AUTHORITY OF FIRE INSURANCE ADJUSTER. — Plaintiff seeks to collect an insurance policy for loss occasioned by fire resulting from use of a gasoline flatiron. A clause rendered policy void if gasoline was kept or used on the premises. Special agent and adjuster, though the policy expressly withheld power to waive written stipulation of policy, orally promised to pay the loss. *Held*, that power to waive orally cannot be inferred from agent's title alone where expressly withheld, and insured is bound by her contract and has

⁶ *New York Life Ins. Co. v. Fletcher*, 117 U. S. 519, 6 S. Ct. 837 (1886); *W. S. Life Ins. Co. v. Smith*, 92 Fed. 503 (C. C. A. 6th, 1899); *Hubbard v. Mutual Reserve Fund Life Ass'n*, 80 Fed. 681 (C. C. R. I., 1891); *Maryland Casualty v. Campbell*, 255 Fed. 437 (C. C. A. 5th, 1919).

⁷ For a full collection of cases and note dealing with the application of the federal rule, see (1906) 4 L. R. A. (N. S.) 607. Also see (1915) 53 L. R. A. (N. S.) 273.

⁸ See *supra* n. 7. Also see *Foster v. Pioneer Mutual Ins. Ass'n*, 37 Wash. 288, 79 Pac. 798 (1905); *Leisen v. St. Paul Fire & Marine Ins. Co.*, 20 N. D. 316, 127 N. W. 837 (1910).

⁹ VANCE, *INSURANCE* (2d ed. 1930) 445.

¹⁰ The West Virginia court states the rule as being applicable in the absence of restrictive covenants upon the agent's authority.

¹¹ Earlier West Virginia cases hold the company bound by the knowledge of the agent. See *McCall v. Phoenix Mutual Ins. Co.*; *Medley v. German Alliance Ins. Co.*, both *supra* n. 1.

That the company may not escape liability for the acts and representations of their agents by provisions in the policy, see *Deitz v. Insurance Co.*, 31 W. Va. 851, 8 S. E. 616 (1888).